

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ROBERT PAGE,

Plaintiff,

Civ. Action No.
5:06-CV-1418 (DEP)

vs.

DAVID MEEKER, JR., *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

OFFICE OF FRANK POLICELLI
10 Steuben Park
Utica, NY 13501

FRANK POLICELLI, ESQ.

FOR DEFENDANTS:

KERNAN, KERNAN LAW FIRM
258 Genesee Street
Suite 600
Utica, NY 13502

JAMES P. GODEMANN, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in connection with this civil rights action brought pursuant to 42 U.S.C. § 1983, and additionally asserting

pendent state law claims, is a motion by the defendants seeking summary judgment dismissing all of plaintiff's claims, both on the merits and based upon qualified immunity. Dkt. No. 13. Defendants' motion, which is opposed by the plaintiff, was argued before the court on May 14, 2008. At the close of argument a verbal decision was rendered dismissing certain of plaintiff's claims, based upon my finding of the lack of any genuine issue of material fact requiring trial, but otherwise denying defendants' motion.

Upon due deliberation, and based upon the court's bench decision rendered on May 14, 2008, which decision is incorporated herein by reference, it is hereby

ORDERED as follows:

1) Defendants' motion for summary judgment dismissing plaintiff's claims of unlawful arrest, both under the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, and pursuant to New York common law, is hereby GRANTED, and those claims are DISMISSED.

2) Defendants' motion for summary judgment dismissing plaintiff's claims under the Fourth and Fourteenth Amendments of the

United States Constitution based upon the claimed unlawful entry by defendants David Meeker, Jr. and Sergeant Steve Albro into plaintiff's residence on the date in question is GRANTED, and those claims are hereby DISMISSED.

3) Defendants' motion for summary judgment dismissing plaintiff's claims of excessive force against defendants David Meeker, Jr. and Sergeant Steve Albro, both federally under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, and pursuant to New York common law, is hereby DENIED based upon the court's finding of the issuance of genuine, triable issues of material fact precluding the entry of summary judgment with respect to those claims.

4) Defendants' motion to dismiss plaintiff's claims against defendant David Meeker, Sr., Chief of the Oneida City Police Department, the City of Oneida, and the City of Oneida Police Department, is GRANTED, the court finding no basis to conclude that a reasonable factfinder could find a ground to impose liability on the part of any of those defendants.

5) Except as set forth above, defendants' motion for summary judgment, including the portion in which they request dismissal of

plaintiff's claims on the basis of qualified immunity, is DENIED.

6) The remaining, surviving claims contained within plaintiff's complaint, including claims of excessive force pursuant to 42 U.S.C. § 1983 and the Fourteenth Amendment and for battery, as against defendants David Meeker, Jr., and Sergeant Steve Albro, will be set down for trial at a date to be determined following a final pretrial conference to be scheduled in the case.

Dated: May 19, 2008
Syracuse, NY



David E. Peebles
David E. Peebles
U.S. Magistrate Judge